

## HOUSE BILL NO. 97

INTRODUCED BY LANGE, HIMMELBERGER, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONVICTION FOR NEGLIGENT HOMICIDE WHILE OPERATING A VEHICLE WHEN UNDER THE INFLUENCE OR FOR NEGLIGENT VEHICULAR ASSAULT IS A PRIOR CONVICTION FOR PURPOSES OF THE PENALTY IMPOSED UPON A PERSON WHO IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT AND WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR CERTAIN OFFENSES; INCREASING THE PENALTY FOR A ~~FOURTH~~ FIFTH OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT; AND AMENDING SECTIONS 61-8-731 AND 61-8-734, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-8-731, MCA, is amended to read:

**"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense.** (1) ~~On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for~~ IF EXCEPT AS PROVIDED IN SUBSECTION (3), IF a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has any combination of three OR MORE prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

1 (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

2 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a  
3 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

4 (3) If a person is convicted of a violation of 61-8-401 or 61-8-406 and, the person has any combination  
5 of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under  
6 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous  
7 drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony  
8 and shall be imprisoned in the state prison AND THE PERSON WAS, UPON A PRIOR CONVICTION, PLACED IN A  
9 RESIDENTIAL ALCOHOL TREATMENT PROGRAM UNDER SUBSECTION (2), WHETHER OR NOT THE PERSON SUCCESSFULLY  
10 COMPLETED THE PROGRAM, THE PERSON SHALL BE SENTENCED TO THE DEPARTMENT OF CORRECTIONS for a term of  
11 not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than  
12 \$10,000, or both.

13 ~~(3)~~(4) The court shall, as a condition of probation, order:

14 (a) that the person abide by the standard conditions of probation promulgated by the department of  
15 corrections;

16 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment  
17 under this section;

18 (c) that the person may not frequent an establishment where alcoholic beverages are served;

19 (d) that the person may not consume alcoholic beverages;

20 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

21 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the  
22 probationary period;

23 (g) that the person submit to random or routine drug and alcohol testing; and

24 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition  
25 interlock system.

26 ~~(4)~~(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or  
27 conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited  
28 to:

29 (a) payment of a fine as provided in 46-18-231;

30 (b) payment of costs as provided in 46-18-232 and 46-18-233;

- (c) payment of costs of court-appointed counsel as provided in 46-8-113;
- (d) community service;
- (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or
- (f) any combination of the restrictions or conditions listed in subsections ~~(4)(a)~~ (5)(a) through ~~(4)(e)~~ (5)(e).
- ~~(5)(6)~~ Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.
- ~~(6)(7)~~ The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

**Section 2.** Section 61-8-734, MCA, is amended to read:

**"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions ~~under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406~~ for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state; ~~a conviction for a violation of a similar statute or regulation in another state; or on a federally recognized Indian reservation;~~ a conviction for a violation of a similar statute or regulation in another state; or on a federally recognized Indian reservation; ~~or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.~~

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, ~~or 61-8-722, or 61-8-731~~ be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility.

1 The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that  
2 the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
3 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred  
4 by the sentencing court.

5 (3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of  
6 imprisonment, the court may order that a term of imprisonment imposed under either section be served by  
7 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

8 (4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

9 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of  
10 driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722  
11 for a violation of 61-8-401 or 61-8-406."

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